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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

PIERCE, JEREMY R

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,907

Applicant(s)

SUTHERLAND ET AL.

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. In view of the Appeal Brief filed on July 23, 2004, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 14, 16, 18, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 14 and 16 recite that the yarn weight is "not less than a yarn number of about 24." How is this measured? According to the Textile Glossary (attached to the

Office Action), "yarn number" is a relative measure of the fineness of the yarns. It is not clear how Applicant is measuring the yarn number here in the present application, since no units are provided in the claims or specification. Is it linear density, or the reciprocal to linear density? The number "24" would normally indicate that the reciprocal to linear density was being measured, however, the material for the yarn is not natural fiber (i.e. cotton). The Examiner will assume that a relatively finer denier fiber is being claimed, although it is not clear.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. (U.S. Patent No. 6,037,280) in view of Wade (U.S. Patent No. 6,268,450) and further in view of Hughes (U.S. Patent No. 5,503,917).

Edwards et al. disclose a porous woven fabric that has increased ultraviolet blocking (column 4, lines 7-12). Edwards et al. disclose using standard acrylic fibers in the woven material, but the reference does not disclose using acrylonitrile fiber. Wade discloses fibers particularly suited for use in outdoors textiles because of their UV stability (column 1, lines 11-14) that comprise up to 98% acrylonitrile (column 2, lines 11-14). It would have been obvious to one having ordinary skill in the art to use the

acrylonitrile fibers disclosed by Wade in the textile taught by Edwards in order to provide a woven material with improved UV stability. With regard to the limitation that the fiber is pigmented, providing any desired color to the fabric would be obvious to one skilled in the art as a matter of design choice. Edwards et al. disclose forming a porous woven fabric, but do not disclose the size of the openings. Hughes teaches the ratio of apertures to thread is a result effective variable that increases breathability and decreases UV protection when the apertures are great, and vice-versa when the apertures are less (column 1, lines 15-54). Absent the finding of unexpected results with using apertures with a size between 0.03 and 0.25 inches, it would have been obvious to one having ordinary skill in the art to adjust the openings in the fabric of Edwards et al. to the claimed range of about 0.03 to 0.25 inches in order to optimize the breathability and UV protection properties for the intended use, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). With regard to the percentages of A and B category UV light transmitted, achieving the desired percentages would also be a matter of adjusting the result effective variable of the size of the openings, and would be obvious to provide in order to achieve desired final properties of the fabric.

6. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. in view of Wade and Hughes as applied above to claim 11, and further in view of Lynch et al. (U.S. Patent No. 3,417,794).

Edwards et al. fail to teach grouping the threads into groups of three. Lynch et al. disclose that shade screens may have a configuration where the warp threads or the weft threads are formed in groups of three (Figures 1 and 2). Such a configuration provides good see-through visibility and reduces glare (column 1, lines 45-62). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use a group of three threads in the warp or the weft in the fabric of Edwards et al. in order to improve the see-through visibility and reduce glare, as taught by Lynch et al. to be known within the shade screen art.

7. Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. in view of Wade and Hughes as applied above to claim 11, and further in view of Goldman (U.S. Patent No. 2,039,987).

Edwards et al. do not teach the yarn weight to be less than a yarn number of about 24. Goldman teaches an open weave sun screening material (Figures). Goldman teaches that it is desirable for the fabric to remain exceedingly thin so as to be translucent to a marked degree (column 2, line 23-30). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use fine yarn with a yarn number not less than 24 in the material of Edwards et al. in order to provide a thin, partially translucent fabric, since Goldman teaches that such thin fabrics are desired in the art of sun screening.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. in view of Wade, Hughes, and Goldman as applied above to claim 14, and further in view of Goodfellow (U.S. Patent No. 4,751,117).

Edwards et al. do not teach the yarn to be 2 ply. However, it is generally accepted in the art of textiles that plying yarn increases strength. Goodfellow teaches that providing a yarn with 2 plies increases strength (column 2, lines 12-13). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use 2 ply yarn in Edwards et al. in order to increase the strength of the fabric, as taught to be known by Goodfellow.

9. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. in view of Wade, Hughes, and Goldman as applied above to claim 16 in section 7 above, and further in view of Lynch et al. as applied to claims 12 and 13 in section 6 above.

Response to Arguments

10. Applicant's arguments filed with regard to claim 11 concerning the Edwards et al. in view of Wade and Hughes rejection have been fully considered but they are not persuasive.

11. Applicant argues that Edwards et al. teach away from providing openings in the fabric. However, Edwards et al. provide that the fabric is porous and has accessible interstitial spaces (column 4, lines 7-16).

12. Applicant argues that Edwards et al. do not teach 100% pigmented acrylonitrile polymer or the size of the openings. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re*

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Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). These features are provided by the other references used in the 103 rejection.

13. Applicant argues that Wade does not provide a window covering panel having both the light transmissivity and UV light blocking properties required by claims 11 and 16. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

14. Applicant argues that Hughes does not disclose 100% pigmented acrylonitrile polymer, nor a grouping of warp threads and weft threads. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

15. Applicant argues that the prior art fails to suggest the claimed range of opening sizes in the fabrics. However, the prior art does teach that aperture openings in light blocking fabrics is a result effective variable. Absent the finding of unexpected results using the claimed ranges of opening sizes, it is obvious to a person of skill in the art to optimize a result effective variable to obtain desired properties in the final product.

Conclusion

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16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 4,587,997 to Brooks; U.S. Patent No. 5,103,848 to Parsons; and U.S. Patent No. 4,002,188 to Hanks.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRP

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October 17, 2004

Elizabeth M. Cole
ELIZABETH M. COLE
PRIMARY EXAMINER